IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.573 OF 1989

The State of Maharashtra, Appellant.

Vs

1. Kedu Dubla Bhamre, 52 yrs,

2. Kadu Dodha Bhamre, 29 yrs,

Both residents of Kersane,
Tal.Satana, Dist: Nasik .. Respondents

Mr D.S. Mhaispurkar, A.P.P. for the appellant-State.
Mr Harshad Palwe, for the respondents. (Absent).

CORAM : Smt.Ranjana Desai &
D.B.Bhosale, JJ.

DATE : 15th June, 2005.

JUDGMENT : (Per D.B.Bhosale, J.)

1. The appellant-State has filed this appeal against the Judgment and order dated 10.5.1989, rendered by the Additional Sessions Judge, Malegaon, District-Nashik in Sessions Trial No.16 of 1989, acquitting the respondents, hereinafter referred to by their first names, for the offence punishable under section 302 read with 34 of I.P.C on the allegations that in the intervening night between 25.11.1988 and 26.11.1988 they committed murder of Mahadu Dubla Bhamre by means of stick and axe.

2. Briefly stated, the prosecution case is that the deceased - Mahadu, accused no.1-Kedu and the solitary eye-witness Kautik (P.W.4) are the real brothers who were having their lands adjacent to each other. Admittedly, they were residing separately. Deceased Mahadu had harvested minor crop, such as Math, Mung etc and had kept the same near Bajra shives in his field. Since Hirubai (PW 1), wife of the deceased, was apprehending damage to the harvested crop by cattle of the neighbouring land owners including accused no.1, she requested her husband to take round of their field. Further the case set up by the prosecution is that at 2 am on 26.11.1988 deceased - Mahadu had gone for round towards his field when cattle of the accused persons were found grazing the harvested crop and on that count there was a quarrel between the deceased and the accused in which accused no.1, who was armed with a stick and accused no.2 with an axe, assaulted the deceased. The said occurrence was witnessed by Kautik Bhamre (PW 4). He, at the relevant time, was returning from Parner along with his wife and two daughters in a bullock-cart. Kautik put Mahadu in his bullock-cart and initially brought him at the farmhouse of Vithal (PW 3) and after giving water

took him to his farmhouse. There he woke up his wife and other members of the family. Mahadu was found to have had sustained severe injuries and in that condition, according to the prosecution, he made oral dying declarations as to who assaulted him at 4 different occasions. Initially he disclosed that at the scene of offence, then at the farmhouse of Vithal, thereafter, in the cart, on way to his house and again at his farmhouse in the presence of several witnesses. At his farmhouse, after disclosing that the accused persons assaulted him and after taking sip of water and tea, he died. The incident was informed by Hiraman (PW 2) to the Police Patil - Bhausaheb More (PW 7), who made further arrangements of recording FIR, sending the dead body for post mortem, etc. The FIR was lodged by Hirubai (PW 1). In pursuance of the FIR lodged by Hirubai, Rajendra Bhamre (PW 14) investigating officer, set the investigation in motion. He arrested both the accused and conducted further investigation by drawing different panchnamas, recording statements of several witnesses, sending the incriminating articles to Chemical Analyst and on completion of the investigation, submitted the chargesheet. After the case was committed to the Sessions Court, the accused were tried and acquitted of the offence under

section 302 read with 34 of IPC.

3. The defence propounded by the accused persons was of total denial. The defence has seriously challenged the claim of Kautik that he had witnessed the alleged incident as also the claim of the prosecution that the deceased was in a fit state of health to make four oral dying declarations to different witnesses. By way of defence, the suggestion was also made to the witnesses that since there was an enmity between Kautik and accused no.1, taking advantage of the situation, Kautik falsely implicated the accused to grab their landed property.

4. We heard the learned APP at considerable length and with his assistance perused the entire evidence and the impugned judgment. Since none appeared for the accused, we did not have a benefit of an assistance from the accused side. The learned APP, at the outset, submitted that the judgment of the trial Court is perverse and not based on the evidence on record. The evidence of the eye-witness - Kautik (PW 4) and of Hirubai (PW 1), Hiraman (PW 2), Vithal (PW 3), Sarubai (PW 5), Rajabai (PW 8), to whom oral dying declarations were made, was sufficient enough to bring home guilt of the accused

persons. There was absolutely no reason for these witnesses to falsely implicate the accused persons. He further submitted that the learned trial Judge has wrongly disbelieved them and discarded their evidence and acquitted them though a conjoint reading of the depositions of these witnesses clearly points at the guilt of the accused persons. Even other material, such as recovery of clothes and weapons, report of the Chemical Analyst and post mortem sufficiently corroborate ocular version of Kautik and the depositions of other witnesses to whom the oral dying declaration was made. The evidence on record is sufficient to draw a conclusion only of guilt of the accused and no other inference was possible and, therefore, the impugned judgment is not only perverse but suffers from manifest illegalities committed while appreciating the evidence and recording the order of acquittal.

5. The law is well settled that while dealing with an appeal against an order of acquittal the approach of the appellate Court to the consideration of the evidence should be to find out as to whether the findings recorded by the trial Court are vitiated by some manifest illegality or the conclusion recorded by the trial Court is such which could not

have been possibly arrived at by the Court acting reasonably and judiciously. If two views are possible on an appraisal of the evidence adduced in the case and the Court below has taken a view which is plausible one, the appellate court cannot legally interfere with an order of acquittal even if it is of the opinion that the other view appears to it to be correct. In other words, the High Court is expected to interfere with the order of acquittal only when the appreciation of evidence by the trial Court is perverse or the conclusion drawn by it cannot be drawn on any view of the evidence, where the application of law is improperly done, where there is substantial omission to consider the evidence existing on record, the view taken by the trial Court is impermissible on the evidence on record and if the order of acquittal is allowed to stand it will result the miscarriage of justice. Keeping this well settled position of law in view, we scrutinised the entire evidence on record to satisfy our conscience whether there is miscarriage of justice if the order of acquittal is allowed to stand and whether after more than 15 years the impugned order deserves interference and its conversion into conviction of the accused.

6. The prosecution case rests on the evidence of 14 witnesses, post mortem report, chemical analyser's reports, panchnamas etc. In so far as 14 witnesses are concerned, they can be divided into three groups, namely, eye-witnesses; witnesses before whom the

oral dying declaration was made by the deceased; and other witnesses, such as doctors, panchas, police patil and police personnels, who were examined to corroborate the depositions of the witnesses in first two categories. We would like to deal with the evidence of Kautik (PW 4), the solitary eye-witness and the evidence of Hirubai (PW 1), Hiraman (PW 2), Vithal (PW 3), Sarubai (PW 5) and Rajabai (PW 8), before whom the alleged oral dying declaration was made, together so as to find out whether their evidence inspires confidence and/or it was rightly discarded by the trial Court. Kautik (PW 4) claims that he witnessed the alleged occurrence. He has stated that at the relevant time he was returning from Parner and when he reached the farmhouse of Vithal (PW 3), Vithal told him that he heard hue and cry coming from the field of his brother Mahadu. Kautik, therefore, left the bullock-cart near the house of Vithal and rushed towards Mahadu's farm. When he reached the scene of offence, he found Kedu

-accused no.1 was poking the stick in the chest of Mahadu and was saying "Pani Magto Bhadvya Kathi Pahili Ka" (asking for water have you seen the stick). Kadu - accused no.2 was also there armed with axe. Kautik, however, has not attributed any overt act to Kadu. On seeing Kautik the accused fled. Kautik went near Mahadu and made him to sit and asked him as to who beat him. When deceased Mahadu allegedly disclosed the names of Kedu and Kadu as the assailants. Since he was not able to walk, Kautik came back to the farm house of Vithal, left the female folk there and went with the bullockcart to the scene of offence. Vithal refused to accompany him on the pretext that his wife was alone in the house. Kautik brought Mahadu in the bullockcart when vithal offered him water. Kautik claims that at that time he again asked Mahadu as to who beat him when he disclosed the names of Kedu and Kadu as the assailants in the presence of his wife, two daughters and Vithal. Thereafter, they took Mahadu in his bullockcart to his house where he woke up the wife of Mahadu and other family members. Mahadu was removed from the bullockcart and was made to sleep in the house where he was given water and tea by his wife. There once again, the deceased made oral dying declaration on a query made by his wife as to who

beat him. This is what Kautik has stated in his examination-in-chief about the occurrence and the oral dying declarations made by Mahadu. When the second oral dying declaration was made, apart from Kautik, Vithal (PW 3), Sarubai (PW 5) and Rajabai (PW 8) were present. The third dying declaration was made on being asked by Rajabai, in the cart, on their way to the house of Mahadu and the fourth oral dying declaration was made in the presence of Hirubai (PW 1), Hiraman (PW 2), Kautik (PW 4), Sarubai (PW 5) and Rajabai (PW 8), the second category of the witnesses.

7. Before we deal with the oral dying declarations made at four different occasions, we would like to consider the evidence of Kautik who claims that he had seen the accused giving assault to Mahadu. Kautik, in his deposition, was very specific that when he reached the scene of offence he found that Kedu was poking stick in the chest of Mahadu and Kadu, who was armed with an axe, was also there. No overt act was attributed to Kadu. He has also stated that he identified Mahadu only when he made him to sit. From distance he did not identify Mahadu though he had identified accused persons. He has also specifically stated that when he made Mahadu to sit, he asked him that who beat him on which Mahadu

disclosed the names of both the accused. This version of Kautik creates doubt for more than one reason. Firstly, from distance why did he not identify Mahadu who was also his brother particularly when he claims that he identified the accused. If he had not identified Mahadu, why did he not shout and ask his brother Kedu, who was inflicting blows, that why they were doing so and that who was the person to whom they were assaulting. He did not do so. His reaction was not natural and normal. He further states that on seeing him, the accused fled and when he made the victim to sit, at that time he identified the victim as Mahadu. If what he says is correct then the question arises why did he ask Mahadu as to who beat him inasmuch as he claims that he had seen Kedu and Kadu beating him with stick and axe. Had he really seen the assault, his natural reaction would have been to ask Mahadu why he was being assaulted by their brother Kadu. Moreover, when Kautik came back to the farmhouse of Vithal, to take the bullockcart to bring Mahadu from the scene of offence, he did not disclose to Vithal and his family members that Kedu and Kadu were beating Mahadu. It is interesting to note that Sarubia (PW 5), wife of Kautik, has, however, stated in her examination-in-chief that when Kautik returned to take the bullockcart she enquired

with him and Kautik told her that Kadu and Kedu beat Mahadu. This is a clear improvement made by Sarubai to support Kautik's claim that he witnessed the occurrence and since Kautik and Vithal had omitted to say so. This certainly creates doubt about veracity of his statement that he had actually seen the alleged occurrence. Apart from some material omissions brought on record and proved, what we found in the cross-examination was more material. In paragraph 2 of the cross-examination, Kautik has categorically stated that he did not identify Mahadu initially. Further, when Kautik was specifically questioned in the cross-examination that whether he asked Mahadu that since when he was lying there, Kautik simply said "that I did not ask Mahadu the time since when he was lying there. He also did not talk about the time since he was lying there". If Kautik had witnessed the occurrence, his reply to the aforesaid question would have been that there was no reason for him to question Mahadu that since when he was lying there since he had himself seen the attack on Mahadu by the accused persons. In the cross-examination he has improved his version saying that the accused fled when he lifted Mahadu. He also asked the accused persons why they beat him and that they should not beat him. It is clear from the

evidence of Kautik that his relations with his brother Kedu were not good. In view thereof, a specific case was put to him that he falsely implicated the accused to swallow the property by taking advantage of the situation. Of course, this suggestion was denied by the witness. Bhausaheb More (PW 7) - Police Patil also did not support the prosecution case that Kautik is the eye-witness. We would like to go to the medical evidence at later stage which further persuaded us to hold that Mahadu was not in a fit state of mind to make oral dying declarations and that Kautik was not an eye-witness to the alleged occurrence.

8. That takes us to consider the second dying declaration which was made by deceased Mahadu at the farmhouse of Vithal. P.W.4 - Kautik has testified that after Mahadu was given water he asked Mahadu as follows: "At that time I again asked him as to who beat him, when he told that Kadu and Keda beat him. He told that the accused were grazing their bullocks on his MATH crop, and as he tried to drive away his bullocks, the two beat him. My wife and daughters were there when this talk took place and no one else was there." However, Vithal (PW 3)in his deposition in respect of second oral dying declaration, has

stated as follows: "He (Kautik) brought Mahadu Duble in the cart. I saw him and gave him water. He was severely injured. I fed him two cups of water and then they left. He did not tell anything then. After giving water, I asked him as to what had happened. He told me that he was beaten by Kadu and Kedu." There is a clear discrepancy between the version of these two witnesses. Kautik states that he asked the deceased as to who beat him at the farmhouse of Vithal while Vithal says he asked Mahadu as to who beat him. Moreover, neither the prosecution nor Kautik in his deposition has explained as to why and what was the reason for Kautik to ask Mahadu that who beat him, if Kautik had seen the accused beating him. In so far as Sarubai (PW 5) is concerned, she has stated as follows: "On enquiry my husband told that Kadu and Keda beat Mahadu. Then he went with the bullockcart there. We did not go there. He returned with Mahadu Dubla in the cart. Mahadu asked for water. Vithal provided water. My husband fed water to Mahadu. Mahadu told that he was dealt by Kedu and Kadu by axe and stick. Then we took him home in the cart." Sarubai does not state as to who asked Mahadu about the assault given to him. In so far as Rajabai (PW 8) is concerned, she does not speak about the second dying declaration

allegedly made at the farmhouse of Vithal at all. She has simply stated that Kautik brought Mahadu in a bullockcart when Mahadu was asking for water and he was given water by Vithal and after giving water, they left for Mahadu's house. A bare look at the testimonies of all these witnesses would show that they are not only inconsistent but every witness has attempted to improve his or her version to support the prosecution case. In the cross-examination of these witnesses, their version in the examination-in-chief has further shaken. Apart from the omissions and discrepancies in respect of the time gap between Kautik going to the scene of offence and coming back, every witness has given different version. Vithal states that Kautik went towards Mahadu's field and immediately came back and when he came back he did not talk to Vithal at all. He only requested Vithal to accompany him to which he refused since his wife alone was at home. It is clear from the evidence of Kautik, Vithal, Sarubai and Rajabai that Kautik alone took the cart to bring Mahadu from the scene of offence. According to Vithal, he returned within 2-4 minutes. Except Kautik, nobody was in the bullockcart which further shows that Kautik himself must have lifted Mahadu and put him in the bullockcart. Looking to the multiple injuries

suffered by the deceased, the clothes of Kautik ought to have been smeared with blood extensively. However, no such evidence has come forward. In so far as Kautik himself is concerned, he does not state how long was the scene of offence from the house of Vithal and how much time was consumed for going upto the scene of offence and coming back to the farmhouse of Vithal. In the cross-examination, Kautik has admitted that he does not remember whether he narrated to the police that near the farmhouse of Vithal while they gave Mahadu water, he narrated the incident in the presence of all. In so far as Sarubai is concerned, she has gone a step further and in the examination-in-chief itself has stated that when they reached the farmhouse of Vithal, he told her husband Kautik that Kedu and Kadu were beating Mahadu which is not even the case of the prosecution nor did Kautik state in his evidence to that effect. Sarubai has made material improvements in her evidence which, in our opinion, has made her testimony doubtful. Moreover, in her statement recorded by the police under section 162 Cr.P.C she did not speak anything about the second dying declaration made at the house of Vithal. Rajabai also in her deposition does not speak anything about the second dying declaration. Rajabai in her

examination-in-chief does not support the version of Sarubai who has stated that Vithal told her husband that Kedu and Kadu were beating Mahadu. In so far as time factor is concerned, Rajabai states that Kautik returned from the scene of offence within 5-10 minutes. She has further stated in examination-in-chief that when Kautik returned, he told everyone at the farmhouse of Vithal that Kadu and Kedu were also there which has not been stated even by Kautik. However, she does not state that Kautik informed about the beating by Kedu and Kadu. In view of this, we are satisfied that the learned trial Judge has rightly discarded both the oral dying declarations allegedly made by Mahadu at the scene of offence and at the farmhouse of Vithal. From the evidence on record it cannot be said that the conclusion, in respect of first and second dying declarations made by Mahadu, arrived at by the trial Court could not have been drawn on any view of the evidence and/or the view taken was not plausible on the evidence on record.

9. This takes us to consider the third and fourth dying declarations. According to the prosecution, the third dying declaration was made by Mahadu in the bullockcart while he was being carried

from the farmhouse of Vithal to his house. Except Rajabai (PW 8), no other witness has stated about the third dying declaration. Kautik and Sarubai are silent about the third dying declaration, while Rajabai is silent about the second dying declaration. However, she has testified that on way to Mahadu's house, in the cart, Kautik again asked Mahadu as to who beat him when he replied that Kedu and Kadu beat him. Kautik and Sarubai did not say so. We are at a loss to understand that if Kautik had seen the alleged incident, why he was asking Mahadu the same question again and again. There was no reason for him to ask Mahadu again and again that who beat him. Moreover, except Rajabai, no other witness speaks about third dying declaration. In view of the apparent discrepancies in the testimonies of Kautik, Sarubai and Rajabai, the testimony of Rajabai regarding third dying declaration does not inspire confidence. Furthermore, her testimony is full of omissions and contradictions. In the cross-examination she has stated that she had narrated to the police in her statement under section 162 of Cr P C that Mahadu was asking for water, however, she could not assign any reason as to why that part of the statement was not incorporated by the police. Further in the cross-examination, she

has stated that to reach from the spot of the incident and the farm of Vithal, it takes about 15-20 minutes. There are several other omissions, contradictions and discrepancies in the evidence of all the aforestated witnesses in so far as the first three oral dying declarations are concerned and, therefore, the learned Judge has rightly disbelieved all the witnesses in so far as the first three dying declarations are concerned.

10. That takes us to consider the last dying declaration which was made by Mahadu at his residence in the presence of Hirubai (PW 1), Hiraman (PW 2) and of course, Kautik , Sarubai and Rajabai. According to the prosecution, when Mahadu was brought to his house, Hirubai saw that the clothes of Mahadu were extensively stained with blood and he had injuries to the chest and left thigh. About fourth dying declaration she has stated as follows: "Mahadu was able to speak. He said he was severely beaten by kadu and Kedu and that he will not survive. We fed him water, prepared tea, hardly some tea was administered, then he expired. He had also said that because cattle of Kadu and Kedu were grazing he went to drive away the cattle and hence the two beat him." In the cross-examination, she has stated that there

was soil in Mahadu's mouth. She removed it by hand. Mahadu drank only one spoon of water. Thereafter, he swallowed one spoon of tea and expired before second spoon of tea was fed to him. She has also stated in the cross-examination that the soil she removed from his mouth was smeared with blood. However, there was omission in that regard. In the statement under section 162 Cr.P.C she did not say so. In the cross-examination, she has also stated that the relations between Kautik and the accused were strained. Hiraman (PW 2) has stated that when he reached the house of deceased Mahadu he found that Hirubai and her daughter-in-law Dwarkabai were asking Mahadu as to who beat him and Mahadu was telling them that Kadu and Kedu beat him. There is again discrepancy in the evidence of Hirubai and Hiraman as to who asked Mahadu regarding beating. Kautik, Sarubai and Rajabai also state that Hirubai asked Mahadu as to who beat him. Apart from this, there are several omissions, contradictions and discrepancies in the evidence of these witnesses in respect of giving water and tea to the deceased Mahadu as also the time factor and also as to who asked Mahadu regarding beating. This all creates doubt about their version and probably that persuaded the learned trial Judge to discard their evidence.

We find absolutely no reason to interfere with the findings recorded by the trial Judge who has assessed the evidence of all the witnesses and has considered it in a proper perspective. The view taken by the trial Court is plausible on the evidence on record. Merely because other view is possible this Court is not expected to interfere with the findings and the conclusions arrived at by the trial Court. Moreover, no independent witness has come forward to depose in support of the prosecution case. Keeping in view the enmity between Kautik and the accused and the manner in which Kautik has narrated the incident claiming that he had seen the accused persons assaulting the deceased, the prosecution ought to have examined independent witnesses to support the case of oral dying declarations made by Mahadu. It has come in the evidence of almost all the witnesses that several other persons were present when last dying declaration was made. However, none of them was examined. Except the family members, no independent witnesses were examined though they were available. This lacunae in the prosecution case also creates doubt about veracity of the testimonies of the interested witnesses.

11. That takes us to consider and evaluate the

medical evidence to find out whether it was possible for Mahadu to make oral dying declarations after sustaining multiple injuries and suffering internal damage which has influenced the learned trial Judge to hold that it was not possible for a person to make the dying declaration in the situation in which Mahadu died. Dr Sharad Wagh (PW 9) conducted autopsy and found 22 injuries sustained by the deceased, out of which four injuries were caused by sharp cutting object and remaining with hard and blunt object. He also noticed fracture of 2nd, 3rd and 4th left side ribs. Corresponding internal injuries were also noted by the doctor. In the cross-examination in paragraphs 1 and 3 the doctor has stated thus:

> "1. It is true in short the patient died because of shock, shock was because of loss of blood, loss of blood was there because fractured ribs penetrated lung. (Volunteers there are also other injuries causing loss of blood). There was also blood in larynx and trachea. (Refer Col.21) There is haematoma over epigastic region, which suggests presence of blood. There is also blood in mesentry region, where haematoma is described present, in Col.21. Haematoma described in Col.No.21 is a result of local blood from peritonial cavity and not the blood from the lung. Blood from lungs has not entered stomach. There was no blood in both the cavities of heart. Right chambers of the heart are of impure blood. Blood from the left chamber went to other parts of the body. No artery of the heart was cut. Function of the lung is to purify the blood coming from the heart. Since there is no blood in the

> heart, it must have entered other parts of the body and also lungs. In this case left lung was punctured. Because of opening of lung, as a result of puncture, some blood must have gone out. Pleura was cut. It cannot be ascertained as to how much blood must have left the body. A human body contains a 4.5 liters blood. It will not be possible to ascertain as to how much blood remained within the body and how much quantity went outside the body."
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> "3. ... It is true reduction of blood from circulatory system, affects the brain most. About 25% blood is required for brain out of the total circulation. If there is reduction of blood in the circulatory system there is inadequate supply to the brain. It is true other parts of the body can survive with short supply of oxygen, but not the brain. Brain can continue with short supply of oxygen for about five minutes maximum. A man faints in case of short supply of oxygen to the brain. The other body can work with short supply of oxygen for some time, but the brain cannot. It is true even when brain is not working, body may survive for some time."

Moreover, it has come in the evidence of the witnesses, viz. Hirubai and Kautik, that there was mud in the mouth of deceased Mahadu which both ,i.e. Hirubai and Kautik tried to remove by putting their hand in his mouth. No evidence in support of their claim is forthcoming either in the form of panchnama of the scene of offence or the place where Mahadu died or in the form of C.A. report. Keeping that in view and considering the admissions given by the doctor in the cross-examination, the learned trial Judge has recorded his finding thus:

"The conclusion of above medical evidence is that, with the number of injuries and the profuse bleeding which deceased must had, it is obvious that in order to get an intelligible statement from the deceased it must necessarily follow within five minutes since the blooding commenced. Viewed from this angle, the only dying declaration that could possibly have been made by the deceased in a physical state of fitness would be the one, at the spot itself and no other, that too only if Kautik had reached there within 5/10 minutes since the incident and once we have disbelieved the story of Kautik to be eye-witness, we do not have anything on record to fix the time gap between infliction of injuries upon Mahadu and arrival of Kautik near him. In this context it is also pertinent to note that the story of Mahadu having made dying declaration to Kautik on the spot itself, is also an improvement in the deposition of Kautik over and above his police statement".

"... .. Admittedly, from the medical evidence, it is evident that there is blood in the cavity of vocal chords and trachea, there is fracture of ribs resulting into multiple lacerations to a lung. There has been haemorrhage in the plureal cavity so as to cause an extensive haematoma of dimension 15 cms x 10 cms. If this medical evidence is taken into account in the light of opinion as in the quotations from Modi's Medical Jurisprudence cited above, a probability cannot be ruled out that the deceased could not have been in a fit state to make any intelligible statement within 5/10 minutes after the incident. From the evidence it can be inferred that the deceased could not have been questioned within 5/10 minutes since the incident, atleast as far as 2nd, 3rd and 4th dying declarations are concerned. I have already indicated that first dying declaration at the spot as deposed to by Kautik is an improvement over police statement. Why I say that none of these dying declarations must have come within less 5/10 minutes is evident from the

> cross-examination of Rajabai, who states that it takes atleast 20 minutes for a person to go from the road to the spot and return and Kautik had such two trips before deceased was asked either in front of the house of Vithal or on the way home, it would make a time gap of atleast 40 minutes between incident and second dying declaration, even if we are to accept for the sake of argument that Kautik had reached there while the deceased was being beaten."

We have scrutinised the medical evidence consisting of oral evidence of the doctor and the post mortem notes. We are satisfied that the conclusion arrived at by the trial Court is plausible one and needs no interference at all.

12. In so far as recovery of the clothes of the deceased and the accused are concerned, irrespective of the Chemical Analyser’s Report, in our opinion, it looses its significance in view of our finding in respect of the testimonies of the eye-witness and other witnesses who speak about the oral dying declaration made by Mahadu. Moreover, the blood group of the deceased and both the accused was found to be of "B" only and, therefore, the learned trial Judge has rightly rejected that piece of evidence to connect the accused persons with the alleged occurrence.

13. We have scrutinised the evidence and the judgment of the learned trial Judge who had an opportunity of watching the demeanour of the witnesses. On appreciation of the evidence on record he has given adequate reasons for holding that the evidence of witnesses is not enough to hold that the prosecution has proved beyond reasonable doubt the involvement of both the accused in commission of the alleged crime. In our opinion, the view expressed by the trial Court is plausible inasmuch as the discrepancies, omissions and contradictions in the evidence of witnesses create sufficient doubt about their version. In our opinion, the learned trial Judge has rightly come to the conclusion that the prosecution has failed to prove the guilt of the accused beyond reasonable doubt. We have reappreciated the evidence for satisfying our conscience and to find out whether the findings and the conclusion arrived at by the trial Court were perverse. The view taken by the trial Court is possible on the evidence on record. In such state of affairs we confirm the finding recorded by the trial Court. In our opinion, these findings are not perverse. There is no ground to interfere with such well balanced order of acquittal made on proper appreciation of evidence on record. We, therefore,

dismiss the appeal against acquittal. We hereby confirm the order of acquittal. Bail bonds, if any, executed under section 390 of Cr.P.C stand cancelled.

(D.B.Bhosale, J.) **(Smt Ranjana Desai, J.)**

cr-appeal573

HIGH COURT
CRIMINAL APPELLATE SIDE

CRIMINAL APPEAL NO.573 OF 1989

Date of Judgment:

15th June, 2005.

For approval and signature

THE HON'BLE SMT.JUSTICE RANJANA DESAI.

THE HON'BLE MR.JUSTICE D.B.BHOSALE.

1. Whether Reporters of Local Papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the Judgment?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any Order made thereunder?

5. Whether it is to be circulated to the Civil Judges?

6. Whether the case involves an important question of law and whether a copy of

the judgment should be sent to Nagpur Aurangabad or Goa offices?